

## Introduction

Drafters of the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment* (CAT) expressed in the preamble the desire "to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world." Building on Article 5 of the *Universal Declaration of Human Rights* (UDHR) and Article 7 of the *International Covenant on Civil and Political Rights* (ICCPR), both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (CIDT), CAT purposefully heightened the responsibility of State Parties to prevent such acts as well as to create and support mechanisms to punish the perpetrators. Israel ratified CAT in 1991, and eight years later, in 1999, the Israeli Supreme Court delivered its landmark judgment in *HCJ 5100/94, The Public Committee Against Torture in Israel (PCATI) vs. the Government of Israel*. This ruling both revealed and outlawed various methods of torture systematically employed by the General Security Service (GSS or Shabak) and other Israeli security forces, overwhelmingly against Palestinian detainees and prisoners. The welcome judgment nonetheless left grave loopholes such as the "necessity defense" exception in cases of "ticking bombs" (i.e., the interrogation of suspects said to be holding information against potential armed attacks), which continue to threaten the most fundamental human rights of prisoners and detainees.

This volume is a product of a joint initiative by Adalah – The Legal Center for Arab Minority Rights in Israel, Physicians for Human Rights – Israel (PHR-Israel) and Al Mezan Center for Human Rights in Gaza to further prevent and fight against torture and ill-treatment in Israel. Towards that aim, in April 2011, the three partner organizations convened a two-day international expert workshop in Jerusalem for local and international practitioners on the subject of "Securing Accountability for

Torture and CIDT in Israel: New Trends and Comparative Lessons". The participants, who included around forty Palestinian, Israeli and international lawyers, legal experts, medical practitioners and human rights professionals, explored the history of torture in Israel, the daily challenges for local practitioners seeking accountability for torture and CIDT, and the changing face of torture in Israel.

Of primary concern was whether we, as organizations and professionals, were consistently recognizing the full range of means and methods of torture and CIDT, whether the existing domestic mechanisms of preventing torture and ill-treatment and of holding perpetrators accountable were sufficient, and whether and how we could incorporate successful strategies employed in various national, regional and international jurisdictions before Israeli courts. As such, the discussion was enriched by the comparative perspectives of international legal and medical experts, who included Professor Manfred Nowak, a former UN Special Rapporteur on Torture, Dr. Stephen Xenakis, a psychiatrist and retired Brigadier General in the Medical Corps of US Army, and Attorney Jamil Dakwar, Director of the American Civil Liberties Union's Human Rights Program. The last session of the workshop provided a unique opportunity for practitioners to discuss and analyze the lessons learned, and think creatively about ways forward in preventing torture and CIDT and seeking accountability.

This volume brings together several presentations that were delivered during the workshop, as well as work conducted by each of the partners during the project. Adalah, PHR-Israel and Al Mezan have compiled and published this material with the aim of contributing to the debate of how best to confront the manifestations of torture and CIDT in the context of Israel and the Occupied Palestinian Territory (OPT). It is the partners' hope that the documentation of the persistent and pervasive use of torture and ill-treatment against Palestinian prisoners in Israel, presented alongside international comparative lessons and strategies, will heighten the sense of urgency among legal and medical professionals as well as the general public to demand the end of torture in Israeli prisons and accountability for victims.

This volume does not discuss torture or ill-treatment carried out against Palestinians by the Palestinian Authority's two governments (the Fatah-led government in Ramallah and the Hamas-led government in Gaza). This is due to the fact that such a debate is outside the scope of our joint work, and is in no way intended to undermine the gravity of such acts or the suffering of the victims. Palestinian human rights organizations based in the OPT are actively engaged in fighting torture by Palestinian actors in the OPT.

Part I consists of a collection of essays based on the expert presentations at the workshop. Attorney Lea Tsemel, a leading lawyer in the fight against torture in Israel and a founder of PCATI, provides a brief history of the legal struggle against torture and ill-treatment in Israeli prisons. This history, in many ways, traces the trajectory of Attorney Tsemel's career as a human rights lawyer over the last decades. Dr.

Rouchama Marton, the founder of PHR-I, contributes an important piece revealing the involvement of Israeli physicians in the torture and ill-treatment of Palestinian detainees, as well as the individual, social and political mechanisms that make this sort of conduct by physicians possible. In his keynote address, former UN Special Rapporteur on Torture Professor Manfred Nowak acknowledged the universal nature of torture and CIDT. Having spent six years documenting the torture and ill-treatment of prisoners worldwide, Professor Nowak draws comparisons and conclusions from his work globally and offers next steps in the struggle against torture. Attorney Jamil Dakwar extends the comparative legal conversation and focuses on the paradigm shift of 9/11 and the response of human rights lawyers and other professionals to hold the United States accountable for the torture and abuse of non-US citizens at Guantanamo Bay, Abu Ghraib, and other horrific sites around the world.

The volume then returns to domestic concerns with Attorney Irit Ballas investigating regimes of impunity in Israel that effectively prevent the defense of victims of torture. Attorney Bana Shoughry-Badarne broaches critical concerns of Israeli legal practitioners in addressing the seemingly insurmountable challenges left by the loopholes of the 1999 Supreme Court decision. The partners are particularly concerned with the torture and ill-treatment of Palestinian minors, and Attorney Gerard Horton offers sobering reflections on this trend. Part One closes with the keynote address of Dr. Stephen Xenakis, who reminds us of the responsibility of the individual to speak out against torture despite the consequences.

Part Two brings together a series of documents based on work conducted over the course of the three-year joint project of Adalah, PHR-Israel and Al Mezan. This section first presents excerpts from a Supreme Court petition that was submitted by Adalah in December 2010 on behalf of the partners and PCATI challenging a new law that exempts the GSS/Shabak from the duty to make audio or video recordings of detainees suspected of committing security offenses (HCJ 9416/10, *Adalah v. The Ministry of Public Security*). The petition argues that audio and video recordings of these investigations act as a crucial safeguard against torture and CIDT and as a means of uncovering the truth. As of this writing, the petition remains pending before the court.

The next text is a psychiatric expert opinion on the subject of coerced false confessions of Palestinian children written by Graciela Carmon, M.D., a child and adolescent psychiatrist and member of PHR-Israel's Board of Directors. Dr. Carmon analyzes the effects of Israeli Shabak and police interrogations on the behavior and mental state of Palestinian children and adolescents, and investigates the psychological, developmental and social factors that may lead them to make false confessions. The expert opinion was submitted to an Israeli Military Court in the case of A.A., a 14-year-old Palestinian boy who was detained, interrogated and indicted for throwing stones.

The following piece provides extensive new data gathered by Al Mezan's field workers on human rights violations perpetrated by Israel in the Gaza Strip between May 2009 and April 2011. The field review demonstrates how the Israeli-imposed blockade of Gaza is being enforced through policies and practices that violate the absolute prohibition of torture and CIDT enshrined in international law. It argues that the use of such practices and policies is particularly prevalent against Palestinians from the Gaza Strip, where Israel continues to exercise a very high level of effective control and to implement a blockade.

The volume concludes with a review by Professor Lisa Hajjar of the University of California – Santa Barbara of a new book on Palestinian political prisoners, entitled, *Threat: Palestinian Political Prisoners in Israel*, edited by Attorney Abeer Baker and Dr. Anat Matar of Tel Aviv University.

The partners wish to thank all of our colleagues who contributed their expertise both during the workshop as well as to this volume, including the Public Committee Against Torture in Israel (PCATI) and Defence for Children International – Palestine. We are also grateful for and acknowledge the valuable contributions of the following organizations to the lively discussions during the workshop: The Association for Civil Rights in Israel (ACRI), Addameer, Al Haq, B'Tselem, HaMoked, Treatment and Rehabilitation Center for Victims of Torture (TRC), the International Committee of the Red Cross (ICRC), Avocats Sans Frontieres (ASF), UNICEF, and the United Nations Office of the High Commissioner on Human Rights (UNOHCHR). Finally, we wish to thank the European Union for its generous support of this project, which has strengthened our collective efforts to combat the torture and ill-treatment of Palestinians.